

# IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN,

Supreme Court No. \_\_\_\_\_

Plaintiff-Appellee,

Court of Appeals No. 246706 *4/12/05*  
(Leave blank.)

v Joezell Williams II  
(Print the name you were convicted under on this line.)

Trial Court No. 02-4374-01  
(From Court of Appeals decision.)

Defendant-Appellant. *DC*

(See Court of Appeals brief or Presentence Investigation Report.)

*Wayne CRT B Sullivan*

**INSTRUCTIONS:** Answer each question. Add more pages if you need more space. **NOTE:** If you are appealing a Court of Appeals decision involving an administrative agency or a civil action, you will have to replace **this page** with one containing the relevant information for that case.

*128533*

## PRO PER APPLICATION FOR LEAVE TO APPEAL

1. I was found guilty on (Date of Plea or Verdict) August 19, 2002

2. I was convicted of (Name of offense) Felony Murder, First Degree Murder, Felony Firearm, Felon in Possession of Firearm, Larceny From Person,  
*DSNTRMNT / MUTL*

3. I had a ☐ guilty plea; ☐ no contest plea; ☒ jury trial; ☐ trial by judge. (Mark one that applies.)

4. I was sentenced by Judge BRIAN SULLIVAN on September 9, 2002  
(Print or type name of judge) (Print or type date you were sentenced)

in the WAYNE County Circuit Court to \_\_\_\_\_ years \_\_\_\_\_ months  
(Name of county where you were sentenced) (Put minimum sentence here)

**"CONTINUED ON EXTRA PAGE"**  
to \_\_\_\_\_ years \_\_\_\_\_ months, and to \_\_\_\_\_ years \_\_\_\_\_ months to \_\_\_\_\_ years \_\_\_\_\_ months.  
(Print or type maximum sentence) (Minimum sentence) (Maximum sentence)

I am in prison at the OAKS CORRECTIONAL FACILITY in EAST LAKE, Michigan.  
(Print or type name of prison) (Print or type city where prison is located.)

5. The Court of Appeals affirmed my conviction on MARCH 2, 2005  
(Print or type date stamped on Court of Appeals decision)

in case number 246706. A copy of that decision is attached.  
(Print or type number on Court of Appeals decision)

6. ☒ This application is filed within 56 days of the Court of Appeals decision. (It MUST be received by the Court within 56 days of date on Court of Appeals decision in criminal cases and 42 days in civil cases. Delayed applications are NOT permitted, effective September 1, 2003.)

**FILED**

APR 22 2005

CORBIN R. DAVIS

CLERK  
MICHIGAN SUPREME COURT

*related to 128294*

RECEIVED

APR 22 2005

CORBIN H. DAVIS  
CLERK SUPREME COURT

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4. to NATURAL  
LIFE years 0 months to NATURAL  
LIFE years 0 months

to NATURAL  
LIFE years 0 months to NATURAL  
LIFE years 0 months

to 0 years 76 months to 20 years 0 months

to 0 years 76 months to 20 years 0 months

to 3 years 0 months to 10 years 0 months

to 2 years 0 months to 2 years 0 months

PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

Joezell Williams II, Defendant-Appellant

CA No. 246 706

**INSTRUCTIONS:** In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8 on page 7.

**GROUND - ISSUES RAISED IN COURT OF APPEALS**

7. I want the Court to consider the issues as raised in my Court of Appeals brief and the additional information below.

**ISSUE I:**

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

Mr. Williams was Denied his State and Federal  
Constitutional Rights to due process of the Law and A Fair  
Trial through Misconduct of the Prosecutor, which consisted of  
MISCHARACTERIZATION OF THE EVIDENCE, IMPROPER CHARACTER,  
"CONTINUED ON EXTRA PAGE"

B. The Court should review the Court of Appeals decision on this issue because: (Check all the ones you think apply to this issue, but you must check at least one.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☒ 2. The issue raises a legal principle which is very important to Michigan law.
- ☒ 3. The Court of Appeals decision is clearly wrong and will cause an important injustice to me.
- ☒ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. (Explain why you think the choices you checked in "B" apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

People V. Meir, 67 Mich App 534

People V. Couch, 49 Mich App 69

People V. Cowell, 44 Mich App 623

United States V. Olano, 507 U.S. 725, 734

People V. Bahoda, 448 Mich 261

PEOPLE V. Cooper, 236 Mich App 643

(SEE BRIEF PROVIDED ALSO)

" CONTINUED ON EXTEN Page "

ISSUE I: Appeal to sympathy and Civic Duty Arqument,  
A. AND BELITTLING OF Defense Counsel.

PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Joezell Williams II, Defendant-Appellant

CA No. 246706

**INSTRUCTIONS:** In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8, on page 7.

**ISSUE II:**

**A.** (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

CONVICTIONS AND SENTENCES FOR BOTH A) PREMEDITATED MURDER AND FELONY MURDER, and B) Felony (LARCENY) Murder and the underlying offense of Larceny, violate Mr. Williams' Double Jeopardy Protections.

**B.** The Court should review the Court of Appeals decision on this issue because: (Check all the ones you think apply to this issue, but you must check at least one.)

- ☒ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☒ 2. The issue raises a legal principle which is very important to Michigan law.
- ☒ 3. The Court of Appeals decision is clearly wrong and will cause an important injustice to me.
- ☒ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

**C.** (Explain why you think the choices you checked in B apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

See: People V. Ronald Lee Stanton, (10-1-02)  
IN CRIMINAL DEFENSE Newsletter  
DEC, 2002  
VOLUME 26, NUMBER 3  
pg. #32  
(SEE BRIEF PROVIDED ALSO)

PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

Joezell Williams<sup>II</sup>, Defendant-Appellant

CA No. 246706

**INSTRUCTIONS:** In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8 on page 7.

**ISSUE III:**

**A.** (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

THE LOWER COURT'S REFUSAL TO SUPPRESS THE EVIDENCE  
SEIZED IN THE SEARCH OF THE HOUSE, FOLLOWING A  
WARRANTLESS ENTRY INTO, AND SEARCH AND SEIZURE WITHIN,  
MR. WILLIAMS' BEDROOM, WAS ERROR WHICH VIOLATED MR.  
"CONTINUED ON EXTRA PAGE"

**B.** The Court should review the Court of Appeals decision on this issue because: (Check all the ones you think apply to this issue, but you must check at least one.)

- ☒ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☒ 2. The issue raises a legal principle which is very important to Michigan law.
- ☒ 3. The Court of Appeals decision is clearly wrong and will cause an important injustice to me.
- ☒ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

**C.** (Explain why you think the choices you checked in B apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

People v. Wagner, 114 Mich App 541

People v. Roderick Walker, 27 Mich App 609

(SEE Supplemental Brief Provided Also)

CHARZELL Lewis never gave consent too The  
Detroit Police, and she will testify too such.

Continued on Extra Page "

ISSUE III : Williams' Fourth Amendment right to  
A. BE FREE OF UNREASONABLE SEARCH AND  
SEIZURE, AND THE INCRIMINATING EVIDENCE  
OBTAINED SHOULD HAVE BEEN SUPPRESSED  
AS "FRUITS OF THE POISONOUS TREE"

ISSUE III : SEE ; U.S. v. Hardeman, 36 F. Supp.  
C. 2d 770, (E.D. MICH 1999)

Payton v. New York, 100 S. Ct. 1371,  
445 U.S. 573, (U.S. N.Y. 1980)

Wong Sun v. U.S., 83 S. Ct. 407,  
371 U.S. 471, (U.S. CAL 1963)

People v. Overall, 7 Mich App. 153, which states in part;  
'our court held that a third party may not consent to a search  
even if premises occupied and owned by him, if the search  
constitutes an invasion of privacy of another person."

## RELIEF REQUESTED

9. For the above reasons I request that this Court *GRANT* leave to appeal, *APPOINT* a lawyer to represent me, and *GRANT* any other relief it decides I am entitled to receive.

April 18, 2005  
(Date)

Joezell Williams # 258256  
(Print your name and number here.)

Joezell Williams # 258256  
(Sign your name here.)

OAKS Correctional Facility  
(Print your address here.)

P.O. Box 38 / East Lake, MI 49626

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

THE PEOPLE OF THE STATE OF MICHIGAN,

Court of Appeals  
No. 246706

Plaintiff-Appellee,

v.

Circuit Court  
02-4374-01

JOEZELL WILLIAMS, II,

Defendant-Appellant.

\_\_\_\_\_  
NEIL J. LEITHAUSER P-33976  
Attorney for Defendant-Appellant  
916 S. Main, Suite 300  
Royal Oak, MI 48067  
(248) 545-2900

-----  
KYM L. WORTHY P-38875, Prosecuting Attorney  
Attorney for Plaintiff-Appellee  
\_\_\_\_\_

**DEFENDANT-APPELLANT'S BRIEF ON APPEAL**

**PROOF OF SERVICE**

**ORAL ARGUMENT REQUESTED**

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## STATEMENT OF APPELLATE JURISDICTION

Jurisdiction was conferred through Const 1963, art. 1, section 20; MCL 600.308(1); MCL 770.3; MCR 7.203(A); MCR 7.204(A)(2)(a); and MCR 6.425(F)(3). The final judgment was entered September 9, 2002, petition for counsel was made on September 19, 2002, and pursuant to MCR 6.425(F)(3) the Claim of Appeal was entered on February 18, 2003.

## QUESTIONS PRESENTED

**I. WAS MR. WILLIAMS DENIED HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW AND A FAIR TRIAL THROUGH MISCONDUCT OF THE PROSECUTOR, WHICH CONSISTED OF MISCHARACTERIZATION OF THE EVIDENCE, IMPROPER CHARACTER, APPEAL TO SYMPATHY AND CIVIC DUTY ARGUMENT, AND BELITTling OF DEFENSE COUNSEL?**

Defendant-Appellant answers "yes"

Plaintiff-Appellee would answer "no"

**II. DO THESE CONVICTIONS AND SENTENCES FOR BOTH A) PREMEDITATED MURDER AND FELONY MURDER, AND B) FELONY (LARCENY) MURDER AND THE UNDERLYING OFFENSE OF LARCENY, VIOLATE MR. WILLIAMS' DOUBLE JEOPARDY PROTECTIONS?**

Defendant-Appellant answers "yes"

Plaintiff-Appellee would answer "no"

## STATEMENT OF FACTS

### **Background**

Joezell Williams, II was convicted by jury as charged of six criminal charges: first-degree premeditated murder, MCL 750.316, first-degree felony murder (with larceny as the underlying felony), MCL 750.316, larceny from the person, MCL 750.357, mutilation of a dead body, MCL 750.160, felon in possession of a firearm ("FIP"), MCL 750.224f, and felony firearm ("FFA"), MCL 750.227b (Verdict, Trial transcript ("TT"), 8/19/2003, pp. 104-105).

He was sentenced by the Honorable Brian Sullivan, Wayne County Circuit Judge, to two years for the FFA conviction, followed by concurrent terms of life without parole for the murder convictions, 76 months to ten years for the larceny conviction, 76 months to ten years for the mutilation of a dead body conviction, and three to five years for the FIP conviction (Sentence transcript ("ST"), 9/09/2002, at 14-15).

### **Trial Testimony**

The case arose from the March 13, 2002 shooting death of L.C. Coffee, who was shot inside of a car on Moenart Street in Detroit; Mr. Coffee's body was then put into an alley in Hamtramck and burned with ignited gasoline. Mr. Coffee died as the result of multiple (five) gunshot wounds; he suffered two wounds to the head (one above right eyebrow, the other to left cheek), two to the left upper chest area, and one to the abdominal area (TT, 8/13/2002, at 38; 41-45, testimony of Carl Schmidt, M.D., Wayne

County Medical Examiner). There were first- and second-degree burns over about 50% of the body, and there was a strong odor of gasoline during the autopsy (TT, 8/13/2002, p. 38).

Twenty-two year-old Donald Chapman was the key witness against Mr. Williams; Mr. Chapman had an agreement that he would not be charged with criminal offenses were he to testify in the matter (TT, 8/12/2002, p. 235). Mr. Chapman said that he had grown-up with both L.C. Coffee and Mr. Williams (TT, 8/12/2002, pp. 201-202). On March 13 2002, at about 10:00 - 10:30 PM he was at a gas station on Eight Mile Road, and saw Mr. Williams and L.C. Coffee, and another man, Mel, across the street at a liquor store; Mr. Chapman drove over there and joined the men in drinking some liquor (TT, 8/12/2002, pp. 203-204). Mel asked Mr. Chapman for a ride, and Mr. Chapman gave a ride to all three; Mel was dropped-off, they made several other stops, and then Mr. Coffee wanted to purchase some marijuana; Mr. Chapman called a friend, and they then drove to the area of Seven Mile and Gratiot, where Mr. Coffee paid \$125.00 for an ounce of marijuana (TT, 8/12/2002, pp. 205-207; 8/13/2002, pp. 8-9). The men planned to go to a birthday party for Mr. Williams' sister, but then Mr. Chapman, who had no money, decided not to go. He then planned to drop-off Mr. Williams and Mr. Coffee on Moenart Street, where one of Mr. Williams' sisters lived; Mr. Williams said that he would borrow his girlfriend's car (TT, 8/12/2002, pp. 209-212). Chapman denied that he had picked-up anyone else that night, other than Mel, Mr. Williams and Mr. Coffee (TT, 8/12/2002, pp.

237-238).

Mr. Chapman said that as he drove down Moenart Street, about mid-block, he heard a "boom", and the whole car lit up; he ducked down, and, after hearing a second shot realized that he was not shot; he looked over and saw Mr. Williams, who was in the front passenger seat, shooting Mr. Coffee, who was in the backseat of Mr. Chapman's car; Mr. Chapman testified that he heard three shots (TT, 8/12/2002, pp. 211-213). Chapman said that Mr. Williams told him to "keep driving"; Chapman said Mr. Williams was then holding Mr. Coffee down on the car-seat and Chapman then heard two more shots (TT, 8/12/2002, p. 214). Mr. Chapman said there had been no altercations in the evening before the shooting, and said that the three had been joking and laughing; Mr. Williams had joked about a fight he had been in while in the penitentiary (TT, 8/12/2002, p. 214-215).

Mr. Chapman said that he did not ask Mr. Williams why he shot Mr. Coffee, but that Mr. Williams mentioned that he had to "survive out here", that he had to eat, and that Mr. Williams then spoke about survival (TT, 8/12/2002, p. 215). They drove on and Mr. Chapman said he had an idea about where they could go; he drove towards Hamtramck and then Mr. Williams began to give directions; they stopped in an alley and Mr. Williams pulled Mr. Coffee from the car (TT, 8/12/2002, pp. 215-216; 8/13/2002, p. 67). Chapman said that Mr. Williams then took Mr. Coffee's shoes, wallet and went through his pockets, and that Mr. Williams said he could not find all of Mr. Coffee's money (TT,

8/12/2002. pp. 216-217; 8/13/2002, p. 69). Chapman said Mr. Williams got back in the car and wanted a ride to the gas station, saying that he needed gas to burn him up, as he had put fingerprints on him, that he just got out of the penitentiary and could not go back (TT, 8/12/2002, p. 218).

Chapman said he drove to the gas station and Mr. Williams bought a gas can and gasoline; Mr. Chapman purchased some washing powder, which he threw on the back seat. Mr. Chapman drove Mr. Williams back to the alley where Mr. Williams, according to Chapman, got out, poured gasoline on the body, lit it, and then jumped back in the car; Chapman said he could see flames as he drove off (TT, 8/12/2002, pp. 219-220). Chapman said that Mr. Williams took about \$70.00 - 80.00 from Mr. Coffee's wallet, and, after the body was burned said "Fuck that nigger" (TT, 8/12/2002, p. 236).

Chapman said that Mr. Williams then wanted a ride to his sister's house, and that Mr. Williams threw away Coffee's shoes and the gas can, and said that he would burn the wallet; at Mr. Williams' sister's house Mr. Williams gave Chapman some things to help clean the car; Chapman tried scrubbing the backseat for about twenty to thirty minutes (TT, 8/12/2002, pp. 220-223). Chapman said he did not know what to do, as he was scared, and had just bought the car from his father; the car was still in his father's name (TT, 8/12/2002, pp. 223-224).

While Mr. Chapman was cleaning the car Linda Payne, Mr. Williams' girlfriend and someone Chapman had known for some years, arrived at Mr. Williams' sister's house;

Mr. Williams, who had changed his clothing, as had Mr. Chapman, then got into Ms. Payne's car and left, apparently to go to the gas station, as he returned with a gas can and wanted Chapman to burn the car-seat (TT, 8/12/2002, pp. 224-226; 8/13/2002, p. 70). Chapman then drove to his cousin's house; Ms. Payne and Mr. Williams followed; after Mr. Williams left Chapman said he went right home, woke his uncle and his father and told them what had happened; his father then made some telephone, including a call to a lawyer, and later Chapman drove the car to police headquarters at 1300 Beaubien, parked it out front, and then spoke with a homicide detective, Sgt. Vintevoghel; Chapman did not relate the entire version that he described at trial, however; he testified that he did not tell his father or the police about the burning of the body until his second statement to the police, later that day (TT, 8/12/2002, pp. 228-229; 230-231; 233).

Chapman then went with Detroit police officers to the alley; Hamtramck police were at the scene, and the scene was taped-off (TT, 8/12/2002, p. 232). Mr. Chapman then showed the police officers the houses of Mr. Williams' sisters; one house was on Moenart and the other was on Runyon (TT, 8/12/2002, p. 233).

Hamtramck Police Officer Adam Tardiff testified that he responded at about 9:50 PM to a dispatch for a "trash fire" in an alley near Yeamans Street; as he approached the fire he could see that the body; he saw two shell-casings on the ground, as well as a blood-stained duffel bag and a bloody greeting card; he preserved the scene (TT, 8/13/2002, pp. 99-102).

Hamtramck Detective Sergeant Dennis Frederick testified that he responded to the scene at about 10:30 PM; he called the Michigan State Police Crime Lab, which handles homicides for Hamtramck; at about 4:00 AM, as he was preparing to leave, Detroit Police arrived at the scene, advised the case might be theirs, and Det. Sgt. Frederick turned the case over to the Detroit officers (TT, 8/13/2002, pp. 103-107).

Linda Payne testified that she was Mr. Williams' girlfriend; they had been together on and off since she was fourteen (TT, 8/13/2002, p. 116). She said Mr. Williams lived at his sister's house on Moenart, but he also stayed with another sister on Runyon (TT, 8/13/2002, pp. 117; 146). In the evening of March 13, 2002 she paged Mr. Williams; he returned the page by calling her on Mr. Coffee's cell-phone; Mr. Williams asked her if she had any money, and that he wanted a couple hundred dollars; she told him she did not have it, and they agreed to meet later (TT, 8/13/2002, pp. 120-121). Later that evening she received a page from Mr. Williams, who was at the Moenart address; Ms. Payne went there and saw Chapman outside cleaning his car; Chapman appeared "shaken up" (TT, 8/13/2002, p. 124). Ms. Payne went inside and saw Mr. Williams in the bathroom; she asked him where he had been, and what was up; she testified that he said "I don't be playing. I don't be playing with these niggas"; she asked him 'what', and he threw her a wallet; she looked inside and saw Mr. Coffee's identification (TT, 8/13/2002, pp. 125-127). Ms. Payne said she asked if he had done anything to Mr. Coffee, and Mr. Williams replied "I got to do what I got to do" (TT, 8/13/2002, p. 128). They went to her

car and Mr. Williams asked her to open the trunk; she did not know what, if anything he put inside (TT, p. 130). Ms. Payne dropped-off her sister and then returned to Moenart; Chapman was still there; Ms. Payne then drove Mr. Williams to the gas station where she bought gas for her car and Mr. Williams bought a gas can and some gas (TT, pp. 131-132). They followed Chapman to a house, and then continued on to the state fair Lounge for Mr. Williams' sister's birthday party; they stayed at the lounge for about 30 - 45 minutes, and then went to a Coney Island restaurant; Ms. Payne said Mr. Williams threw a white plastic bag in the dumpster at the Coney island (TT, 8/13/2002, pp. 133-136).

Ms. Payne said she asked Mr. Williams about what had happened and Mr. Williams told her how it happened; she said he also showed her the gun and demonstrated how he had "just turned around and shot him in the face" as Coffee was rolling some marijuana (TT, 8/13/2002, pp. 139-140; 142). Ms. Payne said Mr. Williams told her he shot Mr. Coffee about six times, and that Chapman did not know anything about it before it happened (TT, p. 141). After the Coney Island they drove to the house on Runyon and went to sleep; a couple of hours later they were awakened by the police; Ms. Payne said she told the officers about the dumpster (TT, pp. 145-147).

Detroit police Officer Vicki Yost testified that she was on duty on the midnight shift on March 14, 2002 when she received a call from Sgt. Vintevoghel to meet him at Mound and Caniff streets (TT, 8/13/2002, p. 168). Officer Yost met Vintevoghel, who

was with Mr. Chapman; they received some information about an alley from Chapman and went to the alley; Hamtramck police and State Police were there (TT, pp. 168-169). From the alley they traveled to the address on Runyon and knocked; a female answered and was told they were looking for Mr. Williams; the female let them into the house (TT, pp. 170-171). The officers first went downstairs where they observed a male sleeping; the male had a gun in his waistband, and the male and the gun were secured; officer Yost said that Ms. Lewis, the homeowner and sister of Mr. Williams, then appeared and told them that male was not Mr. Williams, and that Mr. Williams was in a bedroom upstairs (TT, pp. 172-173). the officers and Ms. Lewis went upstairs and ms. Lewis pointed-out one of the two bedrooms; the officers entered and found Mr. Williams and Ms. Payne asleep on a mattress (TT, p. 174). Mr. Williams was handcuffed and Officer Yost then saw a handgun between the mattress and the wall; she secured the handgun, a Glock (TT, p. 175).

Sgt. Vintevoghel testified that he was on duty at the homicide section on March 14, 2002 when Mr. Chapman arrived; they then went to Hamtramck, and then to the house on Runyon; Sgt. Vintevoghel was present when the Glock was found by Officer Yost (TT, 8/13/2002, pp. 184-186). Sgt. Vintevoghel said that Ms. Payne signed a consent form for a search of her car, and a pair of gym shoes, with some suspected blood, was found in and removed from the trunk (TT, p. 187).

Other police evidence technicians and scientific witnesses testified that a gunshot

residue test was performed on Mr. Williams at about 6:40 AM on March 14, 2002 (TT, 8/13/2002, pp. 202; 205). Gunshot residue tests also were performed on the interior of Mr. Chapman's car; two spent slugs and a casing were found inside the car (TT, 8/13/2002, p. 213). A white plastic bag was found in the dumpster at the Coney Island restaurant; inside the bag officers found a brown wallet with Mr. Coffee's identification; a white washcloth with some suspected bloodstains; and a pair of trousers with some suspected bloodstains (TT, 8/13/2002, pp. 232-233; 234-235). The Glock was test-fired; the three spent-casings (two given to Detroit Police by the State Police as having been found in the alley, and the third having been found in Chapman's car), and the recovered slugs (two from the car), were determined by police witnesses to have been fired from the Glock (TT, 8/13/2002, pp. 248-253). no usable fingerprints were found on the Glock (TT, 8/14/2002, p. 29). Police chemist William Steiner testified that the three gunshot residue tests performed upon Mr. Williams (upon the web of each hand and on the forehead), resulted in positive findings for the left-hand sample and the forehead sample (TT, 8/14/2002, pp. 5-8). A sweatshirt, recovered from the house on Moenart, yielded positive results for the three areas tested (TT, 8/13/2002, pp. 183; 229; 8/14/2002, pp. 8-9). No blood was found on the sweatshirt, however (TT, 8/14/2002, p. 14). Blood matching Mr. Coffee's type was found inside Chapman's car, and possibly on the washcloth recovered from the dumpster (TT, 8/14/2002, pp. 20-26).

Detroit Police Investigator Barbara Simon testified that she interviewed Mr. Williams

at 6:15 AM on March 14, 2002, and obtained a statement from him (TT, 8/14/2002, p. 32, et seq.). In the content of that statement Mr. Williams explained that he had been riding with Mr. Chapman and Mr. Coffee; Chapman picked-up another male, who got into the backseat with Mr. Coffee; Chapman dropped-off Mr. Williams on Moenart, and then returned alone about fifteen or twenty minutes later; Chapman told Mr. Williams to look in the car, and Mr. Williams looked, and told Mr. Chapman that he needed some bleach; Chapman gave a little bag to Mr. Williams and asked him to hold the gun until the next day; they went to the gas station and Mr. Williams got and gave a gas can to Mr. Chapman (TT, 8/14/2002, pp. 39-41).

Police Sgt. Kenneth Gardner testified that he interviewed Mr. Williams twice on March 14, 2002, and obtained two statements; the first of those statement (People's #61), was handwritten by Mr. Williams; the second statement was written by Sgt. Gardner, and which Sgt. Gardner said Mr. Williams refused to sign (TT, 8/19/2002, pp. 10-20; 25). the last, and unsigned statement, directly implicated Mr. Williams in the shooting of Mr. Coffee (TT, 8/19/2002, p. 20).

Mr. Williams waived his right to testify (TT, 8/19/2002, pp. 27-28).

No defense witnesses were presented (TT, 8/19/2002, p. 41).

Mr. Williams was convicted of all of the charged offenses (TT, 8/19/2002, pp. 104-105).

#### **Pre-trial Motions.**

The Trial Court heard suppression motions challenging both the second statement attributed to Mr. Williams (the first to Sgt. Gardner), and the entry, search and arrest inside the home on Runyon (See Evidentiary Hearing ("ET"), 6/21/2002, (Walker-hearing), and Suppression Hearing ("SH") (re: arrest), 6/28/2002). The Court found the statement voluntary, and found there had been consent by the female who admitted the officers into the Runyon house, and then by Ms. Lewis' directing the officers to the upstairs bedroom (ET, p. 70-71; SH, p. 39-41).

A Motion to Quash the felony murder count and the larceny from a person counts was heard, and denied by the Lower Court (TT, 8/12/2002, pp. 3-17).

#### **Prosecutor's Argument.**

During closing argument the prosecutor argued the following:

"I shuddered to think what type of a person could do this to another human being. What type of person? ... Even you, the jury, will never be able to do justice in this matter. how could there be enough justice for the ruthless obliteration of a human life? How could there be enough justice for the act of savagery that we now know took place? How could there even be enough justice for the terror, pain and pain suffered by LC Coffee in the last moments of his life? and the unfortunate truth, there never could be. There never could be enough justice for the ruthless obliteration of a human life cut short by senseless violence ...and the unfortunate truth, a human life has bee obliterated and there will never be enough justice for that. never..." (TT, 8/19/2002, pp. 45; 58-59; 59).

During rebuttal, the prosecutor called defense counsel "the expert", for counsel's comments about how the shooting may have occurred (T, 8/19/2002, p. 71).

Mr. Williams appeals here by right.

## **ARGUMENT I**

**MR. WILLIAMS WAS DENIED HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW AND A FAIR TRIAL THROUGH MISCONDUCT OF THE PROSECUTOR, WHICH CONSISTED OF MISCHARACTERIZATION OF THE EVIDENCE, IMPROPER CHARACTER, APPEAL T SYMPATHY AND CIVIC DUTY ARGUMENT, AND BELITTLING OF DEFENSE COUNSEL**

### **Standard of Review and Preservation of Issue.**

Claims of prosecutorial misconduct are generally reviewed *de novo*, in context and on the record as a whole, to determine whether or not the complained of conduct deprived the defendant of a fair trial. People v. Bahoda, 448 Mich 261; 531 NW2d 659 (1995); People v. Johnson, 187 Mich App 621, 625; 468 NW2d 307 (1991).

Forfeited error, constitutional or nonconstitutional, is subject to the “plain-error” analysis. United States v. Olano, 507 U. S. 725, 734; 113 S. Ct. 1770; 123 L. Ed. 2d 508 (1993); People v. Allen, 466 Mich 86, at 89-90; 643 N.W. 2d 227 (2002); People v. Carines, 460 Mich 750; 597 NW2d 130 (1999).

Counsel did not object at the time; there was no contemporaneous curative instruction (TT, 8/19/2002, at 45; 58).

### **Analysis**

A prosecutor may be vigorous in argument (see, for example, People v. Couch, 49 Mich App 69, 73; 211 NW2d 250 (1973) (arguments need not be in the “blandest” of terms); Bahoda, supra; People v. Cowell, 44 Mich App 623; 205 NW2d 600 (1973);

Berger v. United States, 295 US 78; 55 S Ct 629; 79 L Ed 1315 (1939); however, a prosecutor must avoid improper innuendo, unfairly prejudicial comments and the insertion of extraneous and inflammatory matters into the case, as the prosecutor's obligations extend beyond merely securing a conviction, and include protecting the rights of the accused. See, for example, People v. Carey, 110 Mich App 187; 312 NW2d 205 (1981); People v. Brocato, 17 Mich App 277, 295; 169 NW2d 483 (1969); United States v. DeLoach, 504 F2d 185 (CA DC, 1974); People v. George, 130 Mich App 174, 179; 342 NW2d 908 (1983); United States v. Young, 470 US 1; 105 S Ct 1038; 84 L Ed 2d 11 (1985); Hurd v. People, 25 Mich 405 (1872); Berger, at 88; US Const, AM V and AM XIV; Const 1963, art. 1, section 17. The guarantees to a defendant of a fair trial and due process of law thus act as limitations upon the prosecution. See, for example, US Const, AM V; AM VI; AM XIV; Const 1963, art. 1, section 17; Murray v. Carrier, 477 US 478; 106 S Ct 2639; 91 L Ed 2d 397 (1986); Bahoda, supra, at 292-293, n. 64; United States v. Love, 534 F 2d 87 (CA 6, 1976).

As Justice Sutherland noted in the Berger case, the prosecutor is:

*"...the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor--indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one..."* (emphasis supplied)

The danger that a jury may become confused, or improperly swayed by emotion in response to such “foul blows” is very real; further, when a jury becomes so swayed, it may render its verdict on something less than proof beyond a reasonable doubt, and in so doing has not kept the prosecution to its burden of proving all of the elements beyond a reasonable doubt. See, for example, People v. Leshaj, 249 Mich App 417; 641 NW2d 872 (2002); In re Winship, 397 US 358; 90 S Ct 1068; 25 L Ed 2d 368 (1970). Improper references to a defendant’s character are an example of “foul blows”, and can lead the jury to be swayed by extra-judicial considerations, non-evidence and emotions. For example, see People v. Wright (On Remand), 99 Mich App 801; 298 NW2d 851 (1980); People v. Wise, 134 Mich App 82; 351 NW2d 255 (1984); People v. Farrar, 36 Mich App 294; 193 NW2d 363 (1971).

The prosecutor sought to convince the jury that Mr. Williams was “evil”, “cold-blooded”, so that he acted on March 13, 2002 in accordance with a violent character (TT, 8/19/2002, pp. 44 (“pure evil”); 45). Such character evidence generally is not permitted. See, for example, MRE 404(a), which reads in part: a) *Character evidence generally*. Evidence of a person's character or a trait of character is **not admissible for the purpose of proving action in conformity therewith on a particular occasion** (emphasis supplied). The Rule prohibits exactly what the prosecutor sought to do: i.e., prove “conformity therewith on a particular occasion”. The prosecutor asked “what type of a person could do this to another human being. What type of person?” (TT, 8/19/2002, p. 45). The answer sought, simply, was “one of violent character”.

The prosecutor also argued a combined appeal to the jury's sympathy for the victim and to its sense of civic duty, as follows:

Even you, the jury, will never be able to do justice in this matter. How could there be enough justice for the ruthless obliteration of a human life? How could there be enough justice for the act of savagery that we now know took place? How could there even be enough justice for the terror, pain and pain suffered by LC Coffee in the last moments of his life? and the unfortunate truth, there never could be. There never could be enough justice for the ruthless obliteration of a human life cut short by senseless violence ...and the unfortunate truth, a human life has been obliterated and there will never be enough justice for that. Never..." (TT, 8/19/2002, pp. 45; 58-59; 59).

Such appeals to sympathy and sense of civic duty are improper, and may be reversible. Wise, supra (victim "wants justice"); People v. Cooper, 236 Mich App 643; -- NW2d -- (1999); People v. Meir, 67 Mich App 534; 241 NW2d 280 (1976) (urging conviction to further law enforcement efforts required reversal); DeLoach, supra (victim "shot down like a dog").

Additionally, a prosecutor may not argue facts not in the record, or inferences unsupported by the evidence. For example, see Brocato, supra. The prosecutor below appealed to the jury to speculate about the "terror" and "pain" suffered by Mr. Coffee; the record did not support the argument. The injuries and subsequent burning certainly were gruesome; however, the Medical Examiner testified that the head wounds would have instantly rendered the victim unconscious, although the wounds would not necessarily have been instantly fatal; death might result within a few minutes (TT, 8/13/2002, pp. 42; 46; 56). The prosecutor's insertions of Mr. Coffee's "terror" is simply

unfounded and is an attempt to further and unfairly prejudice the jury against Mr. Williams.

As a whole, the prosecutor's arguments must be deemed improper and misconduct which, on a whole, operated to deprive Mr. Williams of a fair trial. Counsel did not timely object, but the error is plain, and the damage to the defense manifest. A new trial, free of such error, is therefore warranted.

## **ARGUMENT II**

### **CONVICTIONS AND SENTENCES FOR BOTH A) PREMEDITATED MURDER AND FELONY MURDER, AND B) FELONY (LARCENY) MURDER AND THE UNDERLYING OFFENSE OF LARCENY, VIOLATE MR. WILLIAMS' DOUBLE JEOPARDY PROTECTIONS.**

#### **Standard of Review and Preservation of Issue**

Constitutional issues are reviewed **de novo**. People v. Coomer, 245 Mich App 206; 627 NW2d 612 (2001); People v. Lugo, 214 Mich App 99, 705 (1995).

The issue was not raised below.

#### **Analysis**

Mr. Williams was charged in count I and II with first-degree premeditated murder and first-degree felony murder for the death of Mr. Coffee. It was pointed-out during the trial that the counts were alternative theories, but the jury was allowed to consider and convict upon both counts. The Judgment of Sentence (see Appendix A) reflects, on the one hand, that the murder convictions were alternative theories; nevertheless, the Trial Court left the two convictions intact and sentence Mr. Williams on both.

#### **A) Two murder convictions.**

Convictions for both first-degree premeditated and first-degree felony murder arising from the death of a single individual are violative of the prohibitions against double jeopardy. US Const, AM V; Const 19763, art. 1, Section 15; People v. Adams, 245 Mich App 226, 241-242; 627 NW2d 623 (2001). The Lower Court did indicate alternative

theories, but sentenced on both counts (Appendix A). The usual remedy is amend the judgment of sentence to show one conviction, but supported by two theories. People v. Long, 246 Mich App 582, 588; 633 NW2d 843 (2001).

**B) Convictions for felony murder and the underlying felony.**

A conviction and sentence for both the felony murder and the underlying felony are violative of double jeopardy protections. Coomer, supra; People v. Bigelow, 229 Mich App 218, 220-221; 581 NW2d 744 (1998); People v. Gimotty, 216 Mich App 254, 259; 549 NW2d 39 (1996). Absent an express indication of intent by the legislature allowing multiple punishments, a person is protected from multiple convictions and punishments for the same offense by the double jeopardy protections. People v. Robideau, 419 Mich 458, 468; 355 NW2d 592 (1984); People v. Harding, 443 Mich 693, 707-708; 506 NW2d 482 (1993); US Const, AM V; Const 1963, art. 1, section 15.

The convictions and sentences for these two offenses are manifestly violative of the state and federal double jeopardy protections. The usual practice is to vacate the underlying conviction and sentence. Harding, supra.

**APPENDIX A**

**STATE OF MICHIGAN  
THIRD JUDICIAL COURT  
CRIMINAL DIVISION**
**JUDGMENT OF SENTENCE  
COMMITMENT TO  
CORRECTIONS DEPARTMENT**

CASE NO.

02-004374-01

ORI 821095J

Court address

Court telephone no.

Police Report No. 1441 St. Antoine, Rm. 601 FMHJ, DETROIT, MI 48226

(313) 224-2789

THE PEOPLE OF THE STATE OF MICHIGAN

v

Defendant's name, address, and telephone no.

JOEZELL WILLIAMS, II

CTN

82-02206897-01

SID

DOB

11-28-73

Prosecuting attorney name

Bar no.

MICHAEL DUGGAN P35893

Defendant attorney name

Bar no.

MATTHEW EVANS P54800

**THE COURT FINDS:**The defendant, represented by counsel, was found guilty on 8-19-2002 of the crimes stated below:

Plea: use "G" for guilty plea; "NC" for not a contender; "MI" for guilty but mentally ill.

Date

Count	CONVICTED BY			CRIME	CHARGE CODE(S) MCL citation/PACC Code
	Plea	Court	Jury		
1	-	-	G	MURDER 1st *	750.316A
2	-	-	G	HOMICIDE FL MRD *	750.316B
3	-	-	G	L FM PERSON (as Habitual 3)	750.357
4	-	-	G	DSNTRMNT/MUTLN "	750.160
5	-	-	G	FA POSS BY FLN "	750.224F
6	-	-	G	FEL FIREARM	750.227B-A

2. The conviction is reportable to the Secretary of State under MCL 257.732 or MCL 281.1040.

The defendant's driver license number is: \_\_\_\_\_

3. HIV testing was ordered on \_\_\_\_\_ Confidential test results are on file.

Date

**IT IS ORDERED:**

Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM			MAXIMUM		DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Days	Years	Mos.		Mos.	Days	
1	9-9-02	NATURAL	LIFE				3-19-2004	-	-	*
2	9-9-02	NATURAL	LIFE				3-19-2004	-	-	*
3	9-9-02	-	76	-	20	-	3-19-2004	-	-	as Habitual 3rd
4	9-9-02	-	76	-	20	-	3-19-2004	-	-	as Habitual 3rd
5	9-9-02	3	-	-	10	-	3-19-2004			as Habitual 3rd
6	9-9-02	2	-	-	2	-	9-9-2002	-	174	

☐ Defendant shall pay restitution of \$ \_\_\_\_\_. If a cash bond/bail was personally posted by the defendant, Payment toward restitution is to first be collected out of that bond/bail and allocated as specified under MCL 775.22.

5. Sentence(s) to be served ~~consecutively~~ concurrently to:☒ each other, Cts. 1-5 and ~~xxxxxxx~~ ☐ Case Numbers: \_\_\_\_\_ consecutively to Count 6.

6. Defendant shall pay a \$60.00 assessment for the Crime Victim Rights Fund.

7. Defendant shall pay a \$150.00 assessment for forensic lab test.

8. Court recommendation: \*Alternative theories.

SEPTEMBER 9, 2002

Date

Judge BRIAN R. SULLIVAN

P35154

Bar no.

Under MCL 769.16a the clerk of the court shall send a copy of this order to the Michigan State Police Central Records Division to create a criminal history record.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

Deputy court clerk MITCHELLE SMITH

MCL 765.15(2); MSA 28.902(2); MCL 769.16a; MSA 28.1086(1); MCL 775.22; MSA 28.1259; MCL 780.766; MSA 28.1287(766)

MCR 6.427(A)

219b (1/98)

JUDGMENT OF SENTENCE, COMMITMENT TO CORRECTIONS DEPARTMENT

**Court of Appeals, State of Michigan**

**ORDER**

People of MI v Joezell Williams II

Docket No. 246706

LC No. 02-004374

Bill Schuette  
Presiding Judge


David H. Sawyer

Peter D. O'Connell  
Judges

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The Court orders that the motion for reconsideration is DENIED.

Although we did not separately address in our opinion the issue raised in the supplemental brief, we have considered the issue and are not persuaded that the entry by the police and the subsequent arrest were unlawful. Therefore, the evidence discovered in the room was not improperly seized. Defendant did have a reasonable expectation of privacy even if he is regarded as only an overnight guest. *Minnesota v Olson*, 495 US 91; 110 S Ct 1684; 109 L Ed 2d 85 (1990). Nevertheless, the entry is valid because the homeowner, defendant's sister, had either the actual or apparent authority to grant consent to the police. *United States v Matlock*, 415 US 164; 94 S Ct 988; 39 L Ed 2d 242 (1974); see also *Illinois v Rodriguez*, 497 US 177; 100 S Ct 2793; 111 L Ed 2d 148 (1990) (search valid if police had reasonable belief that person giving consent had common authority over the premises).

  
\_\_\_\_\_  
Presiding Judge



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 02 2005

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Chief Clerk

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOEZELL WILLIAMS II,

Defendant-Appellant.

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FOR PUBLICATION

January 27, 2005

9:10 a.m.

No. 246706

Wayne Circuit Court

LC No. 02-004374

Before: Schuette, P.J., and Sawyer and O'Connell, JJ.

SAWYER, J.

Defendant was convicted by a jury of first-degree premeditated murder, MCL 750.316(1)(a), first-degree felony murder, MCL 750.316(1)(b), larceny from the person of another, MCL 750.357, mutilation of a dead body, MCL 750.160, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life in prison on alternative theories of first-degree premeditated murder and first-degree felony murder. He was sentenced as a third habitual offender, MCL 769.12, to 76 to 240 months in prison for the larceny conviction, 76 to 240 months for mutilation of a dead body, 3 to 10 years for felon in possession of a firearm, and a consecutive sentence of 2 years for his felony-firearm conviction. Defendant appeals as of right. We affirm in part and vacate in part.

A witness at trial testified that he was driving while defendant and the victim sat in the backseat of his car when he heard a "boom and the whole car lit up." The driver looked around and saw defendant shooting the victim. Defendant directed the driver to keep going. Defendant told the victim to lie down and pushed the victim's head into the car seat. He then shot the victim two more times. After directing the driver to an alley, defendant pulled the victim's body out of the car, looked through the victim's pockets and took the victim's wallet, shoes and marijuana. Defendant got back in the car and told the driver to take him to a gas station. After purchasing a gas can and some gas, defendant returned to the alley, poured the gas on the victim's body, and lit the victim's body on fire. Later that night, defendant told his girlfriend, another witness at trial, that he shot the victim in the face about six times. Holding his gun in his hand, defendant demonstrated how he shot the victim. The driver immediately told police about the incident and directed them to the alley where defendant dumped the victim's body. Police found defendant sleeping near a firearm that matched slugs from the driver's car and shells from the car and alley.

Defendant's first issue on appeal is whether prosecutorial misconduct deprived him of a fair trial. We disagree. Defendant did not object to the alleged instances of prosecutorial misconduct at trial. Therefore, we will not find error requiring reversal if the prejudicial effect of the prosecutor's comments could have been cured by a timely instruction. *People v Ackerman*, 257 Mich App 434, 449; 669 NW2d 818 (2003).

While the prosecutor vividly described defendant as "cold-blooded" and the crime as "evil," she did not unfairly depict the evidence of the crime or defendant's state of mind. A prosecutor need not limit her arguments to the blandest possible terms. *People v Matuszak*, 263 Mich App 42, 56; 687 NW2d 342 (2004). Defendant's argument that the prosecutor appealed to the jury's civil duty and emotion also fails. The prosecutor correctly defined the jury's role as a finder of fact. Her brief rhetorical reference to justice was a sobering reminder that nothing the jury could do would remedy the harm done, so the reference persuasively emphasized the gravity of the crime more than it urged a result based on civic duty. While possibly objectionable, a limiting instruction certainly would have purged the statement of any potential prejudice. *Ackerman*, *supra*. Regarding improper sympathy, the prosecutor did not deviate from the facts, and those facts suggested a degree of malice relevantly indicative of premeditation. Finally, the prosecutor did not improperly belittle defense counsel when she referred to him as an "expert," because the term in context merely drew the jury's attention to the fact that defense counsel acted as his own expert when he postulated that certain facts clearly demonstrated a scenario contrary to the testimony of the prosecution's witnesses. Therefore, defendant failed to support his claim of misconduct, and we will not reverse his conviction on these grounds.

Defendant's second issue on appeal is whether his convictions and sentences violated principles of double jeopardy. Defendant argues that his convictions and sentences for premeditated murder and felony murder, as well as his convictions and sentences for felony murder and the underlying felony, violated his double jeopardy protections. We disagree that defendant's convictions and sentences for premeditated murder and felony murder as alternative theories violated double jeopardy. However, we vacate his conviction and sentence for the predicate felony of larceny.

Defendant failed to object below. Therefore, we review his unpreserved claims of double jeopardy violations for plain error. *Matuszak*, *supra* at 47. While double jeopardy is violated when a defendant is convicted of both first-degree premeditated murder and first-degree felony murder arising out of the death of a single victim, we will uphold a single conviction for murder based on two alternative theories. *People v Bigelow*, 229 Mich App 218, 220-221; 581 NW2d 744 (1998). In the case at bar, the sentencing order clearly reflects that the trial court complied with *Bigelow* by reflecting one conviction and sentence supported by the two theories of premeditated murder and felony-murder.

We must, however, vacate his conviction and sentence on the underlying larceny offense. This case is presented in essentially the same procedural posture as *Bigelow*: the jury convicted on both the premeditation theory and the felony-murder theory. *Bigelow*, *supra* at 221-222, clearly concluded that, in such a case, the conviction for the underlying felony must be vacated. As our dissenting colleague, who was a member of the *Bigelow* panel, admits, *Bigelow* blindly extended the double jeopardy analysis from a case involving a conviction only under a felony-murder theory to one where the jury explicitly found both the premeditation theory and the felony-murder theory to apply. We do not necessarily disagree with the dissent that he and his

colleagues in *Bigelow* rushed to judgment on this point and that a more thoughtful analysis might lead to the conclusion that the conviction for the underlying felony need not be vacated where, as here (and *Bigelow*), it can be determined with certainty that the jury accepted the premeditation theory (either in addition to or instead of the felony-murder theory).

But there is no authority for us to disagree with the decision of a special panel. A special panel's decision "is binding on all panels of the Court of Appeals unless reversed or modified by the Supreme Court." MCR 7.215(J)(6). Perhaps the Supreme Court will and should modify *Bigelow* in this regard. But until it does, we must follow *Bigelow* and vacate the conviction and sentence for the underlying felony.

Affirmed in part and vacated in part.

/s/ David H. Sawyer  
/s/ Bill Schuette

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOEZELL WILLIAMS II,

Defendant-Appellant.

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FOR PUBLICATION  
January 27, 2005

No. 246706  
Wayne Circuit Court  
LC No. 02-004374

Before: Schuette, P.J., Sawyer and O'Connell, JJ.

O'CONNELL, J. (*dissenting*).

I respectfully dissent.

Defendant's convictions for both first-degree murder and the "underlying felony" of larceny do not violate double jeopardy principles in this case, because defendant was not convicted merely on a felony-murder theory, but also on a separate, valid theory of premeditated murder. Punishing a defendant once for larceny and once for committing a premeditated murder does not violate the intent of the Legislature, so double jeopardy is not offended unless defendant can demonstrate some fatal flaw in the premeditated murder theory, leaving the sentencing court to rely on the felony-murder theory alone. *People v Calloway*, 469 Mich 448, 450-451; 671 NW2d 733 (2003). To strike the larceny conviction, even at the direction of analytically deficient precedent, effectively nullifies defendant's conviction and sentence for premeditated murder, notwithstanding the fact that a jury verdict supports the conviction and authorizes the consequent punishment. Therefore, I would validate the jury's guilty verdict by holding that the multiple punishments for the multiple offenses of premeditated murder and larceny do not violate double jeopardy.

My opinion is informed by the historical development of this area of law. In *People v Sparks*, 82 Mich App 44, 53; 266 NW2d 661 (1978), we held that a defendant may not face multiple convictions or sentences based on the different varieties of murder when the defendant killed a single victim. While this made sense, it left prosecutors and courts in a quandary. If the prosecution pursued only a theory of premeditation despite the fact that a felony-murder theory also applied, it risked the jury finding that the defendant, while certainly the killer, did not premeditate the killing. Because the reverse hypothetical was also true, it was hazardous to proceed on any single theory. Prosecutors wisely proceeded on both theories, usually in separate counts, despite the inevitable elimination of one of them. This left to judges the difficult question: Which valid conviction should be forever vacated to appease double jeopardy? *Sparks*

reversed the felony-murder conviction, but only after finding that the facts adequately supported premeditation. *Id.* at 53. This became the trend. See *People v Passeno*, 195 Mich App 91, 95-96; 489 NW2d 152 (1992), overruled by *People v Bigelow*, 229 Mich App 218, 222; 581 NW2d 744 (1998).

In *People v Wilder*, 411 Mich 328, 342; 308 NW2d 112 (1981), our Supreme Court held that separate convictions for felony murder and the underlying felony violated principles of double jeopardy. Later, in *People v Robideau*, 419 Mich 458, 485; 355 NW2d 592 (1984), our Supreme Court distilled multiple-punishment double jeopardy down to the relatively simple concept of legislative intent. If the Legislature did not intend to punish a defendant separately and cumulatively for two different crimes, then the role of the judiciary was to sentence the defendant accordingly. *Id.*

In the meantime, courts eventually recognized the risk of simply dismissing a valid but seemingly superfluous murder conviction to satisfy double jeopardy mandates. The failure of the remaining conviction to withstand an appellate challenge could mean that an individual validly found guilty of the discarded variety of first-degree murder would go free. To insulate our system from such an injustice, we extinguished this possibility in the conflict-panel case of *People v Bigelow*, 229 Mich App 218, 222; 581 NW2d 744 (1998), holding that the proper procedure was to allow a prosecutor to convict a defendant of first-degree murder with alternative supporting theories. Under this approach, a defendant's first-degree murder conviction was undergirded by separate and independent grounds, and a defendant could not reverse the conviction on the happenstance that a court accidentally vacated the superior, valid theory to placate double jeopardy. To gain a reversal of the murder conviction under the new approach, the defendant needed to demonstrate that neither theory sustaining his murder conviction was valid.

Unfortunately, *Bigelow* also held, without the benefit of any substantive legal analysis, that the felony underlying defendant's felony-murder conviction must be vacated to satisfy the requirements of multiple-punishment double jeopardy. *Id.* at 221-222. *Bigelow* cites *People v Gimotty*, 216 Mich App 254, 259-260; 549 NW2d 39 (1996), a felony-murder case that did not deal with a conviction supported by the separate theory of premeditation. It is clear to me from reading the *Bigelow* opinion that the members of the complex panel, myself included, applied *Gimotty* as binding precedent to a situation where it simply did not apply. Because I can find no case that analyzes this issue, I would treat it as an issue of first impression and hold that principles of double jeopardy are not offended as long as an alternative theory adequately supports the conviction, independently satisfies double jeopardy review, and withstands appellate scrutiny in all other respects.

This approach would validate the jury's finding that defendant premeditated the murder and committed a larceny. Similarly, it would not require us to choose between vacating defendant's valid felony-murder theory or vacating the valid conviction for the underlying felony, because it recognizes that defendant has failed to propose any substantial challenge to the validity of either verdict. The felony-murder theory stands merely as an alternative ground for affirming the first-degree murder conviction, and the theory alone does not receive a punishment (exclusive of the premeditation theory) that would require us to question whether the punishment assigned was more than the Legislature intended. Without multiple punishments stemming particularly and exclusively from defendant's convictions for larceny and felony-murder, we do

not need to vacate the felony-murder theory. Rather, we may wisely preserve it for its original purpose: to uphold defendant's valid conviction for first-degree murder should the premeditation theory fail. This, I think, upholds the paramount legislative intent of having the criminal statutes enforced.

The majority apparently assumes that the Legislature intended for us to trim off and discard a valid conviction and sentence whenever a formulaic application of judicial precedent makes paring the convictions easier than rooting out and applying double jeopardy's fundamental principles. I would rather assume that the Legislature intended to punish every violation of every offense assembled and enumerated in the criminal code, including the meager larceny conviction at issue here. Because I do not perceive any reason why the Legislature would want a sentencing judge to refrain from punishing a larceny merely because the judge has already sentenced the defendant for committing premeditated murder, I would affirm the separate convictions and the multiple punishments those convictions fairly garnered.

The majority's holding also perpetuates the existence of another senseless quandary – if the prosecution proceeds on two probably valid but vulnerable theories of murder, does it risk having its entire case disposed of piecemeal on appeal, including its airtight conviction on the “underlying” felony of armed robbery or, perhaps, aggravated criminal sexual conduct.<sup>1</sup> Absent a compelling directive from the Legislature, I would not require prosecutors and sentencing courts to jettison valid charges and convictions to protect their cases and decisions from potentially irreversible erosion.<sup>2</sup>

In sum, defendant argues, and the majority holds, that the underlying larceny conviction must be dismissed because the Legislature did not intend to punish him for both the underlying larceny and felony murder. Of course, neither the brief nor the majority opinion explains how that lack of intent prevents us from punishing him for committing a larceny and a *premeditated* murder. I would hold that because defendant has been convicted under each theory, he must first demonstrate some fatal flaw in the premeditation theory before advancing his double-jeopardy claim. He has not. Therefore, defendant's separate sentences for first-degree premeditated murder and larceny remain valid, and I would affirm in all respects.

/s/ Peter D. O'Connell

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<sup>1</sup> For those who would argue that conviction of an underlying felony is certainly superfluous to a murder conviction, I cite *Wilder, supra*, where the underlying felony was the only conviction left standing after the Supreme Court reversed the defendant's felony-murder conviction. As explained in *Bigelow, supra* at 220 n 1, the perfunctory reversal of a valid conviction to satisfy double jeopardy requirements unnecessarily risks the irremediable disposal of the only valid conviction.

<sup>2</sup> I must note that the line of reasoning adopted by the majority has the ironic effect of decreasing the amount of punishment received by the most dangerous and contemptible class of criminals imaginable – those found guilty of planning to murder their victim in the course of committing another serious crime. As individuals charged with dispensing justice, we should carefully review our actions when they lead to such anomalous results.

STATE OF MICHIGAN

IN THE COURT OF APPEALS

THE PEOPLE OF THE STATE OF MICHIGAN,

Court of Appeals  
No. 246706

Plaintiff-Appellee,

v.

Circuit Court  
02-4374-01

JOEZELL WILLIAMS,

Defendant-Appellant.

\_\_\_\_\_  
NEIL J. LEITHAUSER P-33976  
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-----  
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Attorney for Plaintiff-Appellee  
\_\_\_\_\_

**DEFENDANT-APPELLANT'S SUPPLEMENTAL BRIEF ON APPEAL**

**PROOF OF SERVICE**

**ORAL ARGUMENT REQUESTED**

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**THE LOWER COURT'S REFUSAL TO SUPPRESS THE EVIDENCE SEIZED IN THE SEARCH OF THE HOUSE, FOLLOWING A WARRANTLESS ENTRY INTO, AND SEARCH AND SEIZURES WITHIN, MR. WILLIAMS' BEDROOM, WAS ERROR WHICH VIOLATED MR. WILLIAMS' FOURTH AMENDMENT RIGHT TO BE FREE OF UNREASONABLE SEARCH AND SEIZURE, AND THE INCRIMINATING EVIDENCE OBTAINED SHOULD HAVE BEEN SUPPRESSED AS "FRUIT OF THE POISONOUS TREE".**

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### **STATEMENT OF APPELLATE JURISDICTION**

Jurisdiction was conferred through Const 1963, art. 1, section 20; MCL 600.308(1); MCL 770.3; MCR 7.203(A); MCR 7.204(A)(2)(a); and MCR 6.425(F)(3). The final judgment was entered September 9, 2002, petition for counsel was made on September 19, 2002, and pursuant to MCR 6.425(F)(3) the Claim of Appeal was entered on February 18, 2003.

### **QUESTION PRESENTED**

**I. WAS THE LOWER COURT'S REFUSAL TO SUPPRESS THE EVIDENCE SEIZED IN THE SEARCH OF THE HOUSE, FOLLOWING A WARRANTLESS ENTRY INTO, AND SEARCH AND SEIZURES WITHIN, MR. WILLIAMS' BEDROOM, ERROR WHICH VIOLATED MR. WILLIAMS' FOURTH AMENDMENT RIGHT TO BE FREE OF UNREASONABLE SEARCH AND SEIZURE, AND SHOULD THE INCRIMINATING EVIDENCE OBTAINED IN THE SEARCH AND SEIZURE HAVE BEEN SUPPRESSED AS "FRUIT OF THE POISONOUS TREE"?**

Defendant-Appellant answers "yes"

Plaintiff-Appellee would answer "no"

## **STATEMENT OF FACTS**

### **Background**

Joezell Williams, II was convicted by jury as charged of six criminal charges: first-degree premeditated murder, MCL 750.316, first-degree felony murder (with larceny as the underlying felony), MCL 750.316, larceny from the person, MCL 750.357, mutilation of a dead body, MCL 750.160, felon in possession of a firearm ("FIP"), MCL 750.224f, and felony firearm ("FFA"), MCL 750.227b (Verdict, Trial transcript ("TT"), 8/19/2003, pp. 104-105).

Mr. Williams was sentenced by the Honorable Brian Sullivan, Wayne County Circuit Judge, to two years for the FFA conviction, followed by concurrent terms of life without parole for the murder convictions, 76 months to ten years for the larceny conviction, 76 months to ten years for the mutilation of a dead body conviction, and three to five years for the FIP conviction (Sentence transcript ("ST"), 9/09/2002, at 14-15).

### **Trial Testimony**

A more detailed recitation of the testimony at trial may be found in Appellant's Brief on Appeal, filed July 12, 2004. The case arose from the March 13, 2002 shooting death of L.C. Coffee, who was shot inside a car on Moenart Street in Detroit; Mr. Coffee's body was then put into an alley in Hamtramck and burned with ignited gasoline. Mr. Coffee died as the result of multiple (five) gunshot wounds (TT, 8/13/2002, at 38; 41-45, testimony of Carl Schmidt, M.D., Wayne County Medical Examiner).

### **Pre-trial Motions.**

The Trial Court heard suppression motions challenging both the second of two statements attributed to Mr. Williams, and, also, the entry, search and arrest inside a home on Runyon Street (See Evidentiary Hearing ("ET"), 6/21/2002, (Walker-hearing, re: statement), and Suppression Hearing ("SH") (re: arrest), 6/28/2002). The Court found the statement voluntary, and found there had been consent by the female who admitted the officers into the Runyon house, and then further consent by a Ms. Lewis, who directed the officers to the upstairs bedroom where Mr. Williams slept (ET, p. 70-71; SH, p. 39-41). The Trial Court found that consent was 'clear as a bell' (SH, p. 40).

At the suppression hearing, Lieutenant Vicki Yost testified she responded to a homicide run at about 3:20 AM (the shooting had occurred the night before, at about 10:00 PM, March 13, 2002); she went first to the intersection of Mound and Caniff, and subsequently to an alley in Hamtramck, where the burned body of the deceased was found (SH, pp. 5-6). Lt. Yost then went to an address on Runyon Street in reliance upon information received from Donald Chapman, who had advised the officers that he had witnessed the homicide (SH, pp. 6-7). Mr. Chapman named Mr. Williams as the shooter, and then pointed-out a house, a house belonging to Mr. Williams' sister, where Mr. Williams might be found (SH, pp. 6-8). The officers knocked at the door and a female guest, Rochelle Hill, answered, and let the officers into the house; Ms. Hill did not tell the officers at the time whether or not she lived at the house (SH, p. 14). The officers first went to a basement bedroom where they found a male (not Mr. Williams) sleeping; the male had a handgun in his waistband; he was secured (SH, pp. 9-11). Sharzell Lewis,

Mr. Williams' sister, then met the officers, and was advised by the officers that they sought her brother; she said that Mr. Williams was in an upstairs bedroom, and she pointed-out which bedroom; the officers entered the bedroom and found Mr. Williams and a friend asleep on a mattress (SH, pp. 11; 17). Mr. Williams was awakened and Lt. Yost asked him if there were a gun; he answered that there was not, but Lt. Yost saw a portion of a gun protruding from between the mattress and the wall (SH, pp. 11-12). Mr. Williams was arrested and taken to the Homicide Section office.

Subsequent testing revealed the presence of gunshot residue on the clothing seized from Mr. Williams, and on his hands; the several casings and slugs recovered from near the body and from the car were matched to the 9mm gun found near Mr. Williams before he was arrested (TT, 8/14/2002, pp. 8-9 (gunshot residue); 8/13/2002, pp. 248-253 (casings)).

As indicated above, the Trial Court found that there was valid consent by Ms. Lewis for the police to search.

## ARGUMENT

**THE LOWER COURT'S REFUSAL TO SUPPRESS THE EVIDENCE SEIZED IN THE SEARCH OF THE HOUSE, FOLLOWING A WARRANTLESS ENTRY INTO, AND SEARCH AND SEIZURES WITHIN, MR. WILLIAMS' BEDROOM, WAS ERROR WHICH VIOLATED MR. WILLIAMS' FOURTH AMENDMENT RIGHT TO BE FREE OF UNREASONABLE SEARCH AND SEIZURE, AND THE INCRIMINATING EVIDENCE OBTAINED SHOULD HAVE BEEN SUPPRESSED AS "FRUIT OF THE POISONOUS TREE".**

### Standard of Review and Preservation of Issue.

A trial court's findings are reviewed for **clear error**; the decision whether or not to suppress evidence is reviewed **de novo**. People v. Powell, 235 Mich App 557, 560; 599 NW2d 499 (1999); People v. Bolduc, 263 Mich App 430; -- NW2d -- (2004); People v. Frohriep, 247 Mich App 692, 702; 637 NW2d 562 (2001).

The issue was addressed below in a pre-trial motion to suppress (EH, 6/21/2002, and SH, 6/28/2002). The Lower Court found the search and seizures valid as resulting from consent of Mr. Williams' sister (SH, pp. 37; 40-41).

### Analysis

As a general rule, the Fourth Amendment to the US Constitution--applicable to the states through the Fourteenth Amendment--bars warrantless searches as **per se** unreasonable. Katz v. United States, 389 US 347, 357; 88 S Ct 507; 19 L Ed 2d 576 (1967); Payton v. New York, 445 US 573, 586; 100 S Ct 1371; 63 L Ed 2d 639 (1980); People v. Oliver, 417 Mich 366; 338 NW2d 167 (1983); [4th Amendment: "The right of

the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath and affirmation and particularly describing the place to be searched, and the persons or things to be seized”]. A warrant may properly issue where there is probable cause (or a “fair probability”) to believe evidence of a crime may be found in that particular place, Illinois v. Gates, 462 US 213, 238; 103 S Ct 2317; 76 L Ed 2d 527 (1983); United States v. Allen, 211 F 3d 970 (CA 6, 2000).

Exceptions to the warrant requirement have developed over the years. For example, a brief warrantless stop and search may be constitutionally permitted where an officer observes conduct which reasonably leads the officer to believe that criminal activity may be afoot, and that the persons with whom he is dealing may be armed and dangerous. Terry v. Ohio, 392 US 1, 21-22, 30; 88 S Ct 1868; 20 L Ed 2d 889 (1968). The so-called “Terry stop” doctrine applies to investigative stops. United States v. Cortez, 517 US 690, 695; 101 S Ct 690; 66 L Ed 2d 621 (1981). Such an investigative stop must be justified at its inception, Terry, *supra* at 20, and must last no longer than is necessary to effectuate the purpose of the stop and dispel the officer’s suspicions. Florida v. Royer, 460 US 491, 500; 103 S Ct 1319; 75 L Ed 2d 229 (1983); United States v. Townsend, 305 F 3d 537 (CA 6, 2002).

Additionally, other recognized exceptions include an automobile exception, exigent circumstances, community caretaking function, and consent. See Oliver, *supra*, 417 Mich at 378 (wherein the Michigan Supreme Court found *no* exigent circumstances to enter

defendant's motel room, even where the defendant had committed a serious felony, there was probable cause to justify an arrest); Schneckloth v. Bustamonte, 412 US 218, 219; 93 S Ct 2041; 36 L Ed 2d 854 (1973). Consent is the exception at issue here. The burden of establishing a justification for the warrantless arrest is upon the government. See Oliver, supra, 417 Mich at 380. The People failed to establish proper consent by Mr. Williams' sister, Ms. Lewis, as a proper basis to search Mr. Williams' bedroom. Ms. Lewis pointed-out the bedroom where Mr. Williams was sleeping, but could not properly consent to entry of his sleeping quarters. Mr. Williams could have provided such consent, but he did not. Accordingly, the Lower Court's finding that the warrantless entry, search, arrest and seizures were supported by proper and valid consent was clearly erroneous. The warrantless entry and arrest were thus unreasonable.

The instant case is distinguishable from cases where the police reasonably believed the person consenting to the search had "common authority" over the premises. For example, in People v. Goforth, 222 Mich App 306; 564 NW2d 526 (1997), a panel of this Court reversed a trial court dismissal based upon a lack of authority to consent. In that case the police were searching for a missing girl; the defendant's mother gave the police consent to search the house, and the subsequent search included entry into the eighteen year-old son's bedroom. The son paid rent, and had a "Keep Out" sign posted. The case involved consent given by the mother. The Court noted that "our conclusion that where a parent has common authority over a child's bedroom (i.e., joint access and contro [citation omitted]), the parent may validly consent to a search thereof." 222 Mich App at

316. The Court framed the issue on review as “whether the police officer reasonably believed that defendant's mother had common authority over defendant's bedroom and could therefore validly consent to the search thereof,” 222 Mich App at 316, and ultimately determined that the officers acted reasonably. Similarly, in United States v. Austin, 81 F3d 161 (CA 6, 1996), the 6<sup>th</sup> Circuit upheld a search where a stepfather gave consent to search the twenty-five year-old's room. The glaring difference between those cases and the instant case, is that a parent or parental figure is not involved here. Instead, Mr. Williams, an adult who was asleep with a female friend, reasonably had a greater expectation of privacy from a sibling, than had the defendants in those two cases cited above. In any event, as a panel of this Court recognized in People v. Mullaney, 104 Mich App 787, 792; 306 NW2d 347 (1981), “Defendant's sister could only consent to a search of the common areas of the house and to a search of her own bedroom. *She could not consent to a search of defendant's bedroom, a place where the defendant had a reasonable expectation of privacy*” (emphasis supplied).

The search was unreasonable, as one might not, on these facts, reasonably believe that one adult sibling has authority to provide valid consent to search the occupied bedroom of the other adult sibling.

If a search is unreasonable it is illegal, and the fruits of the illegal search must be suppressed. See Weeks v. United States, 232 US 383; 34 S Ct 341; 58 L Ed 652 (1914), overruled on other grounds, 364 US 206 (1960); Wong Sun v. United States, 371 US 471; 83 S Ct 407; 9 L Ed 2d 441 (1963) (setting-forth the “fruit of the poisonous tree” doctrine [evidence obtained -- directly

or indirectly -- from an illegal search must be excluded], which provides for suppression of evidence obtained through exploitation of the primary illegality); Lucas v. Michigan, 420 F 2d 259 (CA Mich, 1970).

The primary purpose of the “exclusionary rule” is to deter the police from unlawful conduct, but a significant additional purpose is to prevent the courts from being a “party to lawless invasions of constitutional rights”. United States v. Leon, 468 US 897, 916; 104 S Ct 3405; 82 L Ed 2d 677 (1984); Terry, 392 US at 13. Exclusion of illegally-obtained evidence thus promotes legal and reasonable police action, and also helps maintain public confidence in the judiciary. The reasonableness requirement inherent within the Fourth Amendment, which acts as a limitation upon otherwise potentially unrestrained governmental intrusions, and operates “to protect citizens from tyranny of being singled out for search and seizure without the particularized suspicion **notwithstanding** the effectiveness” of unrestrained methods. Florida v. Bostick, 501 US 429, 111 S Ct 2382, 2389, 115 L Ed 2d 389 (1991) (Justice Marshall, dissenting; emphasis in original).

Upon a review of the totality of the circumstances surrounding the officer’s warrantless entry, search, arrest of Mr. Williams and seizure of incriminating evidence, this Court, Mr. Williams contends, should be left with the conclusion that the Lower Court erred in finding valid consent. Accordingly, as the fruits of the warrantless seizure were so highly, even conclusively, incriminating, the error cannot be viewed as harmless. A new trial should, free of the tainted fruits, should therefore be ordered.

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

People of The State of Michigan  
(Print the name of the opposing party, e.g., "People of the State of Michigan.")

Plaintiff-Appellee,

v Joezell Williams II  
(Print the name you were convicted under on this line.)

Defendant-Appellant.

Supreme Court No. \_\_\_\_\_  
(Leave blank.)

Court of Appeals No. 246706  
(From Court of Appeals decision.)

Trial Court No. 02-4374-01  
(See Court of Appeals brief or Presentence Investigation Report.)

MOTION FOR WAIVER OF FEES AND COSTS

Appellant, pursuant to MCR 7.319(7)(h) and MCL 600.2963, for the reasons stated in the attached affidavit of indigency, requests that this Court: (Check the ones that apply to you.)

- ☒ GRANT a waiver pursuant to MCR 7.319(7)(h) of all fees required for filing the attached pleadings because the provisions of MCL 600.2963, requiring prisoners to pay filing fees do not apply to appeals from a decision involving a criminal conviction or appeals from a decision of an administrative agency. The statute applies *exclusively* to prisoners filing civil cases and appeals in civil cases.
- ☒ GRANT a waiver pursuant to MCR 7.319(7)(h) of all fees required for filing the attached pleadings because the provisions of MCL 600.2963, requiring only indigent prisoners to pay court filing fees violates the equal protection provision of the Michigan Constitution, Art I, Sec 2.
- ☐ Temporarily waive the initial partial payment of filing fees for the attached pleadings and order the Michigan Department of Correction to collect and pay the money to this Court at a later date in accordance with MCL 600.2963, when the money becomes available in appellant's prison account. If the Court does not allow this, I will be prevented from filing the attached pleading in a timely manner.
- ☐ Allow an initial partial payment of \$\_\_\_\_\_ of the fee for filing the attached pleadings and order the Michigan Department of Correction to collect the remaining money and pay it to this Court at a later date in accordance with MCL 600.2963, as additional money becomes available in my prison account. If the Court does not allow this, I will be prevented from filing the attached pleading in a timely manner.

April 18, 2005  
(Date)

Joezell Williams II 258256  
(Print your name and number here.)

Joezell Williams II 258256  
(Sign your name here.)

OAKS CORRECTIONAL FACILITY  
(Print your address here.)

PO Box 38 / EAST LAKE, MI 49626

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

People of The State of Michigan  
(Print the name of the opposing party, e.g. "People of the State of Michigan.")

Plaintiff-Appellee,

v. Joezell Williams II  
(Print the name you were convicted under on this line.)

Defendant-Appellant.

Supreme Court No. \_\_\_\_\_  
(Leave blank.)

Court of Appeals No. 246706  
(From Court of Appeals decision.)

Trial Court No. 02-4374-01  
(See Court of Appeals brief or Presentence Investigation Report.)

AFFIDAVIT OF INDIGENCY

1. My name is Joezell Williams II. I am in prison at DAKS CORRECTIONAL in EAST LAKE MI.  
(Type or print your name here.) (Name of prison) (city where prison is located)

My prison number is 258256. My income and assets are: (Check the ones that apply to you.)  
(Your prison number.)

- ☒ My only source of income is from my prison job and I make \$ .74 per day.  
☒ I have no income.  
☒ I have no assets that can be converted to cash.  
☒ I can not pay the filing fees for the attached application.

I ask this Court to waive the filing fee in this matter.

I declare that the statements above are true to the best of my knowledge, information and belief.

April 18, 2005  
(Date)

Joezell Williams II  
(Sign your name here.)  
Joezell Williams II  
(Print your name here.)

PROOF OF SERVICE

On April 18, 2005, I mailed by U.S. mail one copy of the documents checked below. (Put a check mark by the ones you mailed.)

- ☒ Affidavit of Indigency and Proof of Service  
☒ Motion to Waive Fees and Costs  
☐ Statement of Prisoner Account (this is not necessary in criminal appeals)  
☒ Pro Per Application for Leave to Appeal with a copy of Court of Appeals Decision  
☒ Court of Appeals Brief  
☒ Supplemental Court of Appeals Brief

TO: Wayne County Prosecutor, 1441 St. Antoine, at  
(Name of county where you were sentenced) (Address)  
DETROIT, MI 48226.  
(City) (Zip Code)

I declare that the statements above are true to the best of my knowledge, information and belief.

April 18, 2005  
(Date)

Joezell Williams II  
(Sign your name here.)  
Joezell Williams II  
(Print your name here.)